
# CRS Issue Statement on Defense Acquisition

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The Department of Defense (DOD) has fielded, by all accounts, a technologically advanced and superior military force in the world and is supplied by a sophisticated acquisition system. This acquisition system is comprised of the management policy and processes that guide all DOD acquisition programs. However, at the same time, DOD has experienced significant problems managing the costs, schedule, and performance of this acquisition system, despite continued efforts to reform defense acquisition policies, personnel, and processes.

In recent years, Congress has expressed increasing concerns with the management of the DOD acquisition system. Congressional concerns include the failure of DOD to develop effective acquisition strategies to field weapons systems and effectively provide oversight and accountability for service contracts and contractors, particularly with the broader policy questions raised in the awarding and managing of contracts for reconstruction and combat support services performed in Iraq. Recent reports of weapon system cost overruns and instances of waste, fraud, abuse, and contract mismanagement point to a continued need for investigations, hearings, and other oversight activities for the second session of the 111th Congress. Congress has already taken steps to address some of the problems through the passage of the Weapon Systems Acquisition Reform Act of 2009, Public Law 111-23. Other related legislative initiatives introduced but not enacted during the 111th Congress were the Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight Act, H.R. 2101, and the Contractor Accountability Act, H.R.1360.

DOD has taken steps to improve its acquisition system by revising the DOD 5000 series to reflect statutory and regulatory changes made since the 2003 DOD 5000 series update. The DOD Directive 5000.01 policy and the DOD Instruction 5000.02 operational manual were updated as of December 8, 2008.

Secretary Gates has announced a move to significantly increase the size of the defense acquisition workforce, primarily achieved by converting about 10,000 private-sector contractor positions to full-time government positions, and hiring an additional 10,000 defense acquisition workforce employees by 2015. According to DOD officials, the long-term goal is to increase the size of the organic defense acquisition workforce to its 1998 levels of approximately 147,000 employees. At the same time, statements issued by President Obama have signaled his intention to reduce defense contracting spending by reviewing DOD's acquisition processes prior to the commencement of the next Quadrennial Defense Review. President Obama has reportedly announced that he may perform a line-by-line review of the federal budget, eliminate government programs that are not performing, reduce federal spending on contractors by at least ten percent, and require each federal agency to justify the use of cost-reimbursement (also known as costs-plus) and sole-source (also known as non-competitive) contracts with possible implications for DOD acquisition policy.

Congress has enacted a number of legislative initiatives to improve the civilian and defense acquisition workforces. The FY2010 National Defense Authorization Act contains several provisions which require DOD to submit a strategic workforce plan for the civilian employee workforce and enhance the recruitment and hiring authority for defense acquisition workforce positions. A similar plan was required by Section 869 of the FY2009 National Defense Authorization Act (Public Law 110-417), which directed the Office of Federal Procurement Policy to develop an Acquisition Workforce Development Strategic Plan to guide the growth in capacity and capability of the civilian agency acquisition workforce, for FY2010-2014.

Congressional interest in the second session is also likely to reflect questions on the proper role of the federal government versus the role of the private sector in defense operations. More specifically, the questions raised include whether federal civilian employees or private contractors should perform some of DOD's essential functions. The definition of what functions are considered inherently governmental, based largely on Office of Management and Budget Circular A-76 policy, has been used to justify an expanded role for the private contractor. The fact that some private contractors perform duties that have been previously considered to be inherently governmental has raised concerns in Congress.

As an example, weapon acquisition programs such as the Future Combat System and the U.S. Coast Guard Deepwater Program have raised concerns in Congress because they have been managed by private-sector lead system integrators (LSIs), instead of being managed by DOD personnel. DOD has conceded in the past that the government has lacked the organic capability to manage these programs, and is now taking steps to transfer the role of the LSI to performance by defense acquisition workforce personnel.

Some observers, for example, point to an increased use of private security contractors to perform functions traditionally considered inherently governmental, particularly in support of combat operations in Iraq and Afghanistan, and question whether using contractors to perform such functions reduces incentives to build governmental capacity to carry out these functions. Despite congressional efforts to expand court-martial jurisdiction and jurisdiction under the Military Extraterritorial Jurisdiction Act (MEJA), some contractors may still remain outside the jurisdiction of U.S. courts, both civil or military, for improper conduct in connection with U.S. counterinsurgency operations overseas.

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